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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA

13 CARRIE FERRARA CLARK,

14 Plaintiff,

15 vs.

16 CITY OF TUCSON,

17 Defendant.

4:14-CV-02543-TUC-CKJ

ANSWER

(Hon. Judge Jorgenson)

19
20 DEFENDANT City of Tucson answers as follows (each numbered answer
21 corresponds with Plaintiff's paragraphs):

22 **PARTIES, JURISDICTION AND VENUE**

- 23 1. Upon information and belief, admits Plaintiff is a resident of Pima County,
24 Arizona.
25 2. Admits that the City of Tucson is an incorporated municipality situated in
26 Pima County.

1 3. Admits and alleges Defendant City of Tucson complied with the provisions
2 set forth in the Civil Rights Act of 1964, as amended by the Pregnancy
3 Discrimination Act, 42 U.S.C. §§ 2000e *et seq.* (Title VII), and the Arizona Civil
4 Rights Act (ACRA), A.R.S. § 41-1461(6)(a).

5 4. Admits.

6 5. Admits and alleges this court has original jurisdiction over Plaintiff's federal
7 claims, pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over her
8 state law claims pursuant to 28 U.S.C. § 1367.

9 6. Admits and alleges the United States District Court, District of Arizona, in
10 Tucson, AZ is the proper venue.

11 7. Denies and alleges Defendant is not liable to Plaintiff for any cause of
12 action alleged in her Complaint and Defendant did not cause Plaintiff to suffer
13 any injuries or damages.

14 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15 8. Admits that on or about July 31, 2013, Plaintiff filed a written charge of sex
16 discrimination with the Arizona Attorney General's Office, Civil Rights Division,
17 pursuant to the Arizona Civil Rights Act, § 41-1481(A). Defendant also alleges
18 that on or about April 21, 2014, based upon its investigation, the Office of the
19 Attorney General, Civil Rights Division dismissed Plaintiff's case concluding the
20 evidence obtained did not establish any violation of statute(s) on the part of the
21 City of Tucson. A Notice of Right to Sue letter was issued to Plaintiff on April 24,
22 2014.

23 9. Admits.

24 **GENERAL ALLEGATIONS**

25 10. Admits.

1 11. Admits at the time Plaintiff filed her Complaint she was a Paramedic with
2 the Tucson Fire Department (“TFD”) and alleges Plaintiff applied for and was
3 selected for the position of Fire Prevention Inspector for TFD effective August 10,
4 2014.

5 12. Upon information and belief, admits Plaintiff gave birth to her son on July
6 19, 2012, and she returned to work on October 27, 2012.

7 13. Admits when Plaintiff returned to work she returned to her assignment as a
8 Swing Paramedic on “C” Shift, which means she continued to be assigned to
9 work at different stations depending on TFD’s needs. Defendant also alleges
10 that Plaintiff provided TFD with a list of requested stations to be assigned and
11 TFD worked off of that list when scheduling Plaintiff.

12 14. Defendant is without knowledge or information sufficient to form a belief as
13 to the truth of some of the material allegations contained in paragraph 14 of
14 Plaintiff’s Complaint and, therefore, denies the same.

15 15. Defendant is without knowledge or information sufficient to form a belief as
16 to the truth of the material allegations contained in paragraph 15 of Plaintiff’s
17 Complaint and, therefore, denies the same.

18 16. Defendant is without knowledge or information sufficient to form a belief as
19 to the truth of the material allegations contained in paragraph 16 of Plaintiff’s
20 Complaint and, therefore, denies the same.

21 17. Defendant is without knowledge or information sufficient to form a belief as
22 to the truth of the material allegations contained in paragraph 17 of Plaintiff’s
23 Complaint and, therefore, denies the same.

24 18. Defendant is without knowledge or information sufficient to form a belief as
25 to the truth of the material allegations contained in paragraph 18 of Plaintiff’s
26 Complaint and, therefore, denies the same.

1 19. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of the material allegations contained in paragraph 19 of Plaintiff's
3 Complaint and, therefore, denies the same.

4 20. Defendant is without knowledge or information sufficient to form a belief as
5 to the truth of the material allegations contained in paragraph 20 of Plaintiff's
6 Complaint and, therefore, denies the same.

7 21. Defendant is without knowledge or information sufficient to form a belief as
8 to the truth of the material allegations contained in paragraph 21 of Plaintiff's
9 Complaint and, therefore, denies the same.

10 22. Defendant is without knowledge or information sufficient to form a belief as
11 to the truth of the material allegations contained in paragraph 22 of Plaintiff's
12 Complaint and, therefore, denies the same.

13 23. Defendant is without knowledge or information sufficient to form a belief as
14 to the truth of the material allegations contained in paragraph 23 of Plaintiff's
15 Complaint and, therefore, denies the same.

16 24. Defendant is without knowledge or information sufficient to form a belief as
17 to the truth of the material allegations contained in paragraph 24 of Plaintiff's
18 Complaint and, therefore, denies the same.

19 25. Defendant is without knowledge or information sufficient to form a belief as
20 to the truth of the material allegations contained in paragraph 25 of Plaintiff's
21 Complaint and, therefore, denies the same.

22 26. Admits that on or about November 9, 2012, Plaintiff submitted a request to
23 be temporarily assigned to TFD Station 12. Defendant also alleges that one of
24 the reasons for Plaintiff's request was that Station 12 was closer to her mother,
25 which made it easier for her mother to pick up expressed milk to feed her son
26 during her work shifts. Defendant is without knowledge or information sufficient

1 to form a belief as to the truth of the remaining allegations contained in
2 paragraph 26 of Plaintiff's Complaint and, therefore, denies the same.

3 27. Defendant is without knowledge or information sufficient to form a belief as
4 to the truth of the material allegations contained in paragraph 27 of Plaintiff's
5 Complaint and, therefore, denies the same.

6 28. Defendant is without knowledge or information sufficient to form a belief as
7 to the truth of the material allegations contained in paragraph 28 of Plaintiff's
8 Complaint and, therefore, denies the same.

9 29. Defendant is without knowledge or information sufficient to form a belief as
10 to the truth of the material allegations contained in paragraph 29 of Plaintiff's
11 Complaint and, therefore, denies the same.

12 30. Defendant is without knowledge or information sufficient to form a belief as
13 to the truth of the material allegations contained in paragraph 30 of Plaintiff's
14 Complaint and, therefore, denies the same.

15 31. Defendant is without knowledge or information sufficient to form a belief as
16 to the truth of the material allegations contained in paragraph 31 of Plaintiff's
17 Complaint and, therefore, denies the same.

18 32. Defendant is without knowledge or information sufficient to form a belief as
19 to the truth of the material allegations contained in paragraph 32 of Plaintiff's
20 Complaint and, therefore, denies the same.

21 33. Defendant is without knowledge or information sufficient to form a belief as
22 to the truth of the material allegations contained in paragraph 33 of Plaintiff's
23 Complaint and, therefore, denies the same.

24 34. Defendant is without knowledge or information sufficient to form a belief as
25 to the truth of the material allegations contained in paragraph 34 of Plaintiff's
26 Complaint and, therefore, denies the same.

1 35. Admits on January 7, 2013, Martina Macias, Senior Equal Opportunity
2 Specialist at the City of Tucson's Office of Equal Opportunity Programs ("OEOP")
3 conducted an intake interview of Plaintiff. Defendant alleges that at that time,
4 Plaintiff described her version of what occurred with her request to be assigned
5 to Station 12. Defendant also alleges Plaintiff was not subjected to any
6 discrimination.

7 36. Defendant denies that Ms. Macias told Plaintiff she had a valid claim.
8 Defendant alleges Ms. Macias told Plaintiff she could file a complaint with OEOP
9 and also told her she could fax the complaint in if she was unable to drop it off at
10 their office. Plaintiff chose not to file a complaint with OEOP.

11 37. Defendant is without knowledge or information sufficient to form a belief as
12 to the truth of the material allegations contained in paragraph 37 of Plaintiff's
13 Complaint and, therefore, denies the same.

14 38. Defendant is without knowledge or information sufficient to form a belief as
15 to the truth of the material allegations contained in paragraph 38 of Plaintiff's
16 Complaint and, therefore, denies the same.

17 39. Defendant is without knowledge or information sufficient to form a belief as
18 to the truth of the material allegations contained in paragraph 39 of Plaintiff's
19 Complaint and, therefore, denies the same.

20 40. Defendant is without knowledge or information sufficient to form a belief as
21 to the truth of the material allegations contained in paragraph 40 of Plaintiff's
22 Complaint and, therefore, denies the same.

23 41. Defendant is without knowledge or information sufficient to form a belief as
24 to the truth of the material allegations contained in paragraph 41 of Plaintiff's
25 Complaint and, therefore, denies the same.

26

1 42. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of the material allegations contained in paragraph 42 of Plaintiff's
3 Complaint and, therefore, denies the same.

4 43. Defendant is without knowledge or information sufficient to form a belief as
5 to the truth of the material allegations contained in paragraph 43 of Plaintiff's
6 Complaint and, therefore, denies the same.

7 44. Defendant is without knowledge or information sufficient to form a belief as
8 to the truth of the material allegations contained in paragraph 44 of Plaintiff's
9 Complaint and, therefore, denies the same.

10 45. Defendant is without knowledge or information sufficient to form a belief as
11 to the truth of the material allegations contained in paragraph 45 of Plaintiff's
12 Complaint and, therefore, denies the same.

13 46. Defendant is without knowledge or information sufficient to form a belief as
14 to the truth of the material allegations contained in paragraph 46 of Plaintiff's
15 Complaint and, therefore, denies the same.

16 47. Defendant is without knowledge or information sufficient to form a belief as
17 to the truth of the material allegations contained in paragraph 47 of Plaintiff's
18 Complaint and, therefore, denies the same.

19 48. Defendant is without knowledge or information sufficient to form a belief as
20 to the truth of the material allegations contained in paragraph 48 of Plaintiff's
21 Complaint and, therefore, denies the same.

22 49. Defendant is without knowledge or information sufficient to form a belief as
23 to the truth of the material allegations contained in paragraph 49 of Plaintiff's
24 Complaint and, therefore, denies the same.

1 50. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of the material allegations contained in paragraph 50 of Plaintiff's
3 Complaint and, therefore, denies the same.

4 51. Defendant is without knowledge or information sufficient to form a belief as
5 to the truth of the material allegations contained in paragraph 51 of Plaintiff's
6 Complaint and, therefore, denies the same.

7 52. Defendant is without knowledge or information sufficient to form a belief as
8 to the truth of the material allegations contained in paragraph 52 of Plaintiff's
9 Complaint and, therefore, denies the same.

10 53. Defendant is without knowledge or information sufficient to form a belief as
11 to the truth of the material allegations contained in paragraph 53 of Plaintiff's
12 Complaint and, therefore, denies the same.

13 54. Defendant is without knowledge or information sufficient to form a belief as
14 to the truth of the material allegations contained in paragraph 54 of Plaintiff's
15 Complaint and, therefore, denies the same.

16 55. Defendant is without knowledge or information sufficient to form a belief as
17 to the truth of the material allegations contained in paragraph 55 of Plaintiff's
18 Complaint and, therefore, denies the same.

19 56. Defendant is without knowledge or information sufficient to form a belief as
20 to the truth of the material allegations contained in paragraph 56 of Plaintiff's
21 Complaint and, therefore, denies the same.

22 57. Defendant is without knowledge or information sufficient to form a belief as
23 to the truth of the material allegations contained in paragraph 57 of Plaintiff's
24 Complaint and, therefore, denies the same.

1 58. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of the material allegations contained in paragraph 58 of Plaintiff's
3 Complaint and, therefore, denies the same.

4 59. Defendant is without knowledge or information sufficient to form a belief as
5 to the truth of the material allegations contained in paragraph 59 of Plaintiff's
6 Complaint and, therefore, denies the same.

7 60. Defendant is without knowledge or information sufficient to form a belief as
8 to the truth of the material allegations contained in paragraph 60 of Plaintiff's
9 Complaint and, therefore, denies the same.

10 61. Admits on or about July 19, 2013, TFD issued a new nursing room policy.
11 Defendant is without knowledge or information sufficient to form a belief as to the
12 truth of the remaining material allegations contained in paragraph 61 of Plaintiff's
13 Complaint and, therefore, denies the same.

14 62. Defendant is without knowledge or information sufficient to form a belief as
15 to the truth of the material allegations contained in paragraph 62 of Plaintiff's
16 Complaint and, therefore, denies the same.

17 63. Defendant is without knowledge or information sufficient to form a belief as
18 to the truth of the material allegations contained in paragraph 63 of Plaintiff's
19 Complaint and, therefore, denies the same.

20 64. Defendant is without knowledge or information sufficient to form a belief as
21 to the truth of the material allegations contained in paragraph 64 of Plaintiff's
22 Complaint and, therefore, denies the same.

23 65. Defendant is without knowledge or information sufficient to form a belief as
24 to the truth of the material allegations contained in paragraph 65 of Plaintiff's
25 Complaint and, therefore, denies the same.

1 66. Upon information and belief, admits that on July 31, 2013, Plaintiff filed a
2 written charge of discrimination with the Arizona Attorney General's Office, Civil
3 Rights Division pursuant to the Arizona Civil Rights Act, § 41-1481(A).

4 67. Defendant is without knowledge or information sufficient to form a belief as
5 to the truth of the material allegations contained in paragraph 67 of Plaintiff's
6 Complaint and, therefore, denies the same.

7 68. Admits.

8 69. Defendant is without knowledge or information sufficient to form a belief as
9 to the truth of the material allegations contained in paragraph 69 of Plaintiff's
10 Complaint and, therefore, denies the same.

11 70. Admits that on or about May 22, 2014, Plaintiff filed a notice of claim
12 alleging she had experienced sex discrimination and retaliation since returning to
13 work in late October 2012.

14 71. Defendant is without knowledge or information sufficient to form a belief as
15 to the truth of the material allegations contained in paragraph 71 of Plaintiff's
16 Complaint and, therefore, denies the same.

17 72. Defendant is without knowledge or information sufficient to form a belief as
18 to the truth of the material allegations contained in paragraph 72 of Plaintiff's
19 Complaint and, therefore, denies the same.

20 73. Defendant is without knowledge or information sufficient to form a belief as
21 to the truth of the material allegations contained in paragraph 73 of Plaintiff's
22 Complaint and, therefore, denies the same.

23 74. Defendant is without knowledge or information sufficient to form a belief as
24 to the truth of the material allegations contained in paragraph 74 of Plaintiff's
25 Complaint and, therefore, denies the same.

1 75. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of the material allegations contained in paragraph 75 of Plaintiff's
3 Complaint and, therefore, denies the same.

4 76. Defendant is without knowledge or information sufficient to form a belief as
5 to the truth of the material allegations contained in paragraph 76 of Plaintiff's
6 Complaint and, therefore, denies the same.

7 77. Defendant is without knowledge or information sufficient to form a belief as
8 to the truth of the material allegations contained in paragraph 77 of Plaintiff's
9 Complaint and, therefore, denies the same.

10 78. Defendant is without knowledge or information sufficient to form a belief as
11 to the truth of the material allegations contained in paragraph 78 of Plaintiff's
12 Complaint and, therefore, denies the same.

13 79. Defendant is without knowledge or information sufficient to form a belief as
14 to the truth of the material allegations contained in paragraph 79 of Plaintiff's
15 Complaint and, therefore, denies the same.

16 80. Defendant is without knowledge or information sufficient to form a belief as
17 to the truth of the material allegations contained in paragraph 80 of Plaintiff's
18 Complaint and, therefore, denies the same.

19 81. Defendant is without knowledge or information sufficient to form a belief as
20 to the truth of the material allegations contained in paragraph 81 of Plaintiff's
21 Complaint and, therefore, denies the same.

22 82. Denies.

23 83. Denies.

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25 ///

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COUNT ONE

**(Sex Discrimination/Retaliation in Violation of the Fair Labor
Standards Act, U.S.C. § 207(r) and § 215)**

1
2
3
4 84. Defendant hereby incorporates by reference the assertions and allegations
5 contained in paragraphs 1-83 above as though fully set forth herein.

6 85. Paragraph 85 is a legal conclusion and no response is necessary from
7 Defendant.

8 86. Denies.

9 87. Denies.

10 88. Denies.

11 89. Denies.

12 90. Denies.

13 91. Denies that Defendant violated any constitutional, statutory, common law,
14 or other right of the Plaintiff and, therefore, denies that Plaintiff was damaged in
15 any way by Defendant.

COUNT TWO

**(Sex Discrimination in Violation of Title VII of the
Civil Rights Act of 1964, as Amended)**

16
17
18
19 92. Defendant hereby incorporates by reference the assertions and allegations
20 contained in paragraphs 1-91 above as though fully set forth herein.

21 93. Admits that the City of Tucson is an employer within the meaning of the
22 Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, 42
23 U.S.C. §§ 2000e *et seq.* (Title VII).

24 94. Denies.

25 95. Denies.

1 96. Denies that Defendant violated any constitutional, statutory, common law,
2 or other right of the Plaintiff and, therefore, denies that Plaintiff was damaged in
3 any way by Defendant.

4 **COUNT THREE**

5 **(Sex Discrimination/Hostile Work Environment in Violation of the**
6 **Arizona Civil Rights Act, § 41-1463(B)(1))**

7 97. Defendant hereby incorporates by reference the assertions and allegations
8 contained in paragraphs 1-96 above as though fully set forth herein.

9 98. Denies.

10 99. Paragraph 99 is a legal conclusion and no response is necessary from
11 Defendant.

12 100. Denies.

13 101. Denies that Defendant violated any constitutional, statutory, common law,
14 or other right of the Plaintiff and, therefore, denies that Plaintiff was damaged in
15 any way by Defendant.

16 **COUNT FOUR**

17 **(Retaliation in Violation of the Arizona**
18 **Civil Rights Act, A.R.S. § 41-1464(A))**

19 102. Defendant hereby incorporates by reference the assertions and allegations
20 contained in paragraphs 1-101 above as though fully set forth herein.

21 103. Paragraph 103 is a legal conclusion and no response is necessary from
22 Defendant.

23 104. Defendant is without knowledge or information sufficient to form a belief as
24 to the truth of the material allegations contained in paragraph 104 of Plaintiff's
25 Complaint and, therefore, denies the same.

26 105. Denies.

1 106. Denies that Defendant violated any constitutional, statutory, common law,
2 or other right of the Plaintiff and, therefore, denies that Plaintiff was damaged in
3 any way by Defendant.

4 107. Defendant denies any allegation not specifically admitted in this Answer.

5 **AFFIRMATIVE DEFENSES**

6 Defendant affirmatively alleges that:

7 108. Alleges that Plaintiff's Complaint fails to state a claim upon which relief can
8 be granted.

9 109. Alleges Plaintiff was not subjected to any adverse employment action.

10 110. Alleges Defendant exercises reasonable care in preventing and/or
11 correcting any alleged sex discrimination, and Plaintiff failed to take advantage of
12 the corrective or preventative opportunities provided to her as a City employee.

13 Thus, Defendant is protected under the *Ellerth-Faragher* defense for Plaintiff's
14 state and federal claims. *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998) and
15 *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

16 111. Alleges Plaintiff Carrie Clark did not mitigate or may not have mitigated her
17 damages which may have been incurred as she alleges in her Complaint.

18 112. Alleges that Defendant is without knowledge or information sufficient to
19 form a belief as to all the affirmative defenses that may become available as
20 discovery progresses. Therefore, Defendant asserts all the affirmative defenses
21 available pursuant to Federal Rules of Civil Procedure, Rules 8 and 12, A.R.S. §
22 12-820, *et seq.*, A.R.S. § 12-821, *et seq.*, A.R.S. § 41-1463, *et seq.* and any other
23 defenses raised by discovery, as if such defenses were set forth specifically
24 herein.

25 ///

1 WHEREFORE, having fully answered Plaintiff's Complaint, Defendant
2 requests that the Court:

3 A. Dismiss Plaintiff's Complaint for failure to state a claim for which
4 relief may be granted;

5 B. Determine that Plaintiff take nothing by same;

6 C. Award Defendant its costs of litigation, including a reasonable
7 attorney's fee;

8 D. Grant such other and further relief as the Court deems just and
9 proper.

10 DATED December 9, 2014

11 MICHAEL G. RANKIN
12 City Attorney

13 By s/Michelle Saavedra
14 Michelle Saavedra
15 Michael W.L. McCrory
16 Attorneys for Defendants

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on December 9, 2014, I electronically transmitted the
19 attached document to the Clerk's Office using the CM/ECF System for filing and
20 transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

21 Jeffrey H. Jacobson
22 JACOBSON LAW FIRM
23 2730 East Broadway Blvd., Suite 160
24 Tucson, AZ 85716
25 *Attorney for Plaintiff*

26 By B. Munguia